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24 Attorneys for Defendant
25 THE BIG 12 CONFERENCE, INC.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

21 IN RE NATIONAL COLLEGIATE
22 ATHLETIC ASSOCIATION ATHLETIC
23 GRANT-IN-AID CAP ANTITRUST
24 LITIGATION

25 This Document Relates to:

26 *Jenkins, et al. v. National Collegiate
27 Athletic Association, et al.*
28

MDL Docket No. 14-md-2541-CW
Case No. 14-cv-02758-CW

**ANSWER AND AFFIRMATIVE DEFENSES
OF DEFENDANT THE BIG 12
CONFERENCE, INC. TO PLAINTIFFS'
SECOND AMENDED COMPLAINT**

Judge: Hon. Claudia Wilken
Date Filed: March 17, 2014
Trial: None set

1 The Big 12 Conference, Inc. (the “Big 12”), by and through its undersigned attorneys,
2 hereby answers and sets forth its affirmative defenses to the Second Amended Complaint—Class
3 Action Seeking Injunction of Martin Jenkins, Nigel Hayes, and Alec James (collectively,
4 “Plaintiffs”). The Big 12 denies all of the allegations in the Second Amended Complaint unless
5 expressly admitted herein.
6

7 **INTRODUCTION**¹

8 1. The Big 12 admits that the National Collegiate Athletic Association (“NCAA”)
9 and five NCAA Division I athletic conferences are named as defendants in this action. The Big
10 12 denies the remaining allegations of Paragraph 1.

11 2. The Big 12 admits upon information and belief that the named Plaintiffs bringing
12 this action are three current college football and men’s basketball players. The Big 12 denies the
13 remaining allegations of Paragraph 2.
14

15 3. The Big 12 admits that Plaintiffs have brought this action seeking injunctive relief
16 for alleged violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Big 12 denies the
17 remaining allegations of Paragraph 3.

18 4. The Big 12 admits that the Plaintiffs and the putative class members are current or
19 former football and men’s basketball players, and that the Big 12 is subject to the NCAA rules.
20 The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the
21 allegations in Paragraph 4 relating to any agreements that Plaintiffs may have entered in and on
22 that basis denies them. The Big 12 denies the remaining allegations of Paragraph 4.
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24 5. The Big 12 denies the allegations of Paragraph 5.
25

26 ¹ The headings used in this Answer and Affirmative Defenses are headings created by Plaintiffs and used in the
27 Second Amended Complaint.

6. The Big 12 admits that the current NCAA bylaw 15.02.05 defines a “full grant-in-aid” as “tuition and fees, room and board, and required course-related books.” The Big 12 further admits that a “full grant-in-aid” may be referred to as an “athletic scholarship.” The Big 12 denies the remaining allegations of Paragraph 6.

7. The Big 12 denies the allegations of Paragraph 7.

8. The Big 12 denies the allegations of Paragraph 8.

JURISDICTION AND VENUE

9. The Big 12 admits that Plaintiffs purport to bring this action under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. Except as expressly admitted, the Big 12 denies the remaining allegations of Paragraph 9.

10. Paragraph 10 consists of a legal conclusion to which no response is required.

11. Paragraph 11 consists of a legal conclusion to which no response is required.

12. The Big 12 admits that the District of New Jersey is the location of universities with Division I football and/or men's basketball programs, including the institutions listed in Paragraph 12. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 12 and on that basis denies them.

13. The Big 12 admits that it has entered into licensing agreements and that those broadcasts are sometimes nationwide. The Big 12 lacks sufficient knowledge and information to form a belief as to the truth of the allegations regarding other conferences. Except as expressly admitted, the Big 12 denies the allegations of Paragraph 13.

THE PARTIES

14. The Big 12 admits that Clemson University, which is located in Clemson, South Carolina, is a Division I member of the NCAA and the Atlantic Coast Conference. The Big 12 lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 14 and on that basis denies them.

15. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 15 and on that basis denies them.

16. The Big 12 admits that the University of Wisconsin is located in Madison, Wisconsin, and that Wisconsin is a Division I member of the NCAA and a member of The Big Ten. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 16 and on that basis denies them.

17. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 17 and on that basis denies them.

18. The Big 12 admits that the University of Wisconsin is located in Madison, Wisconsin, and that Wisconsin is a Division I member of the NCAA and a member of The Big Ten. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 18 and on that basis denies them.

19. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 19 and on that basis denies them.

20. The Big 12 admits that the NCAA is an unincorporated association of more than 1,200 member institutions and athletic conferences located throughout the United States with its headquarters and principal place of operations at 700 W. Washington Street, Indianapolis,

1 Indiana. The Big 12 further admits that the NCAA has a Division I Men's Basketball
2 Championship. The Big 12 denies the remaining allegations of Paragraph 20.

3 21. The Big 12 admits that it is one of the defendants named in this lawsuit and that it
4 has entered into licensing agreements. Except as expressly admitted, the Big 12 lacks sufficient
5 knowledge or information to form a belief as to the truth of the allegations concerning other
6 defendants. The Big 12 denies the remaining allegations of Paragraph 21.

8 22. The Big 12 admits that it is an unincorporated association that is tax-exempt
9 under Section 501(c)(3) of the U.S. Internal Revenue Code with its principal offices at 400 East
10 John Carpenter Freeway, Irving, Texas 75062. The Big 12 lacks sufficient knowledge or
11 information to form a belief as to the truth of the remaining allegations in Paragraph 22 and on
12 that basis denies them.

13
14 **CLASS ACTION ALLEGATIONS**

15 23. The Big 12 admits that Plaintiffs seek to bring this action as a class action. The
16 Big 12 denies the remaining allegations of Paragraph 23.

17 24. The Big 12 admits that Plaintiffs seek to certify a class as described in Paragraph
18 24. The Big 12 denies the remaining allegations of Paragraph 24 and denies that a class can or
19 should be certified in this matter.

20 25. The Big 12 admits that Plaintiffs seek to certify a class as described in Paragraph
21 25. The Big 12 denies the remaining allegations of Paragraph 25 and denies that a class can or
22 should be certified in this matter.
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1 26. The allegations in Paragraph 26 include legal conclusions to which no response is
2 required. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of
3 the factual allegations in Paragraph 26 and on that basis denies them.

4 27. The allegations in Paragraph 27 include legal conclusions to which no response is
5 required. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of
6 the factual allegations in Paragraph 27 and on that basis denies them.

7 28. The Big 12 denies the allegations of Paragraph 28.

8 29. The Big 12 denies the allegations of Paragraph 29.

9 30. The Big 12 denies the allegations of Paragraph 30 and its subparts.

10 31. The Big 12 denies the allegations of Paragraph 31.

11 **NATURE OF INTERSTATE TRADE AND COMMERCE**

12 32. The Big 12 admits that it and its member institutions are involved in college
13 football and men's basketball programs. The Big 12 admits that it enters into licensing
14 agreements. Except as expressly admitted, the Big 12 denies the remaining allegations of
15 Paragraph 32.

16 33. The Big 12 admits that it and/or its member institutions have programs that at
17 times involve travel, communications, use of equipment, broadcast rights, advertisements,
18 promotions, sales of tickets, merchandise, concessions, apparel, employment of coaches and
19 staff, contracting with referees, and negotiations related to the foregoing items. The Big 12 lacks
20 sufficient knowledge or information to form a belief as to the truth of the allegations in
21 Paragraph 33 that are directed toward other defendants and on that basis denies them. The Big
22 12 denies the remaining allegations of Paragraph 33.

1 34. The Big 12 lacks sufficient knowledge or information to form a belief as to the
2 truth of the allegations of Paragraph 34 and on that basis denies them.

3 35. The Big 12 lacks sufficient knowledge or information to form a belief as to the
4 truth of the allegations of Paragraph 35 and on that basis denies them.

5
6 **THE ILLEGAL AGREEMENTS TO RESTRAIN COMPETITION**

7 36. The Big 12 admits that the NCAA publishes a rule book known as the NCAA
8 Division I Manual and that the Big 12 has a handbook. The Big 12 further admits that the
9 NCAA's rules are enacted through a process. Except as expressly admitted, the Big 12 denies
10 the remaining allegations of Paragraph 36.

11 37. The Big 12 admits that the quoted text in Paragraph 37 appears in Article 5.01.1
12 of the NCAA Constitution as set forth in the 2014-15 edition of the NCAA Division I Manual.
13 The Big 12 denies the remaining allegations of Paragraph 37.

14 38. The Big 12 admits that Plaintiffs have brought this action attempting to challenge
15 the NCAA Operating Bylaws identified in Paragraph 38. The Big 12 denies the remaining
16 allegations of Paragraph 38.

17 39. The Big 12 admits that Article 15 of the 2014-15 edition of the NCAA Division I
18 Manual sets forth certain financial aid rules. The Big 12 admits that the quoted text in Paragraph
19 39 appears in certain NCAA Operating Bylaws within Article 15. The Big 12 denies the
20 remaining allegations of Paragraph 39.

21 40. The Big 12 admits that the quoted text in Paragraph 40 appears in certain NCAA
22 Operating Bylaws as set forth in the 2014-15 edition of the NCAA Division I Manual, except for
23 subparagraph (e) of Bylaw 12.1.2. The Big 12 denies the remaining allegations of Paragraph 40.
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1 41. The Big 12 admits that the 2014-15 edition of the NCAA Division I Manual
2 includes Bylaw 12.1.2.1 and its subsections which address prohibited forms of pay. The Big 12
3 denies the remaining allegations of Paragraph 41.

4 42. The Big 12 admits that NCAA Operating Bylaws 16.11.2 and 16.02.3, as set forth
5 in the 2014-15 edition of the NCAA Division I Manual, contain the language quoted in
6 Paragraph 42. The Big 12 denies the remaining allegations of Paragraph 42.

7 43. The Big 12 admits that the quoted text in Paragraph 43 appears in NCAA
8 Operating Bylaw 16.1.4 as set forth in the 2014-15 edition of the NCAA Division I Manual. The
9 Big 12 denies the remaining allegations of Paragraph 43.

10 44. The Big 12 admits that Article 13 of the 2014-15 edition of the NCAA Division I
11 Manual includes certain rules on recruiting, and that the quoted text in Paragraph 44 appears in
12 certain NCAA Operating Bylaws within that Manual. The Big 12 denies the remaining
13 allegations of Paragraph 44.

14 45. The Big 12 denies that the allegations in Paragraph 45 accurately quote NCAA
15 Operating Bylaw 13.6.7.1 as set forth in the 2014-15 edition of the NCAA Division I Manual.
16 The Big 12 admits that the remaining quoted text in Paragraph 45 appears in certain NCAA
17 Operating Bylaws in the 2014-15 edition of the NCAA Division I Manual. The Big 12 denies
18 the remaining allegations of Paragraph 45.

19 46. The Big 12 admits that the quoted text in Paragraph 46(c) appears in Bylaws
20 1.3.2, 6.1, and 6.5.3 as set forth in the 2014-15 edition of the Big 12 Conference Handbook. The
21 Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the
22

1 allegations relating to the rules of the SEC, ACC, Big Ten, and the Pac-12 and on that basis
2 denies them. The Big 12 denies the remaining allegations of Paragraph 46.

3 47. The Big 12 denies that the allegations in Paragraph 47 accurately quote Article
4 1.3.2 of the NCAA Constitution as set forth in the 2014-14 edition of the NCAA Division I
5 manual. The Big 12 admits that the remaining quoted text in Paragraph 47 appears in Article
6 2.8.3 of the NCAA Constitution in the 2014-15 edition of the NCAA Division I Manual. The
7 Big 12 denies the remaining allegations of Paragraph 47.

9 48. The Big 12 admits that Article 19 of the 2014-15 edition of the NCAA Division I
10 Manual includes certain rules on enforcement. The Big 12 denies that the allegations in
11 Paragraph 48 accurately quote NCAA Operating Bylaw 19.01.2 of the 2014-15 edition of the
12 NCAA Division I Manual. The Big 12 denies the remaining allegations of Paragraph 48.

13 49. The Big 12 admits that NCAA member institutions are required to report
14 instances of noncompliance as set forth in current NCAA Operating Bylaw 19.2.2. The Big 12
15 further admits that schools charged with violating NCAA rules may be required to appear before
16 the NCAA Committee on Infractions, which may make factual findings and may impose various
17 penalties, including fines, scholarship reductions, recruiting restrictions, and in some
18 circumstances banning a school from competing in a sport. The Big 12 lacks knowledge or
19 information sufficient to form a belief as to the truth of the allegations in Paragraph 49 regarding
20 the number of violations reported, processed, and investigated, or the NCAA's employment of
21 staff in its enforcement department, and on that basis denies them. The Big 12 denies the
22 remaining allegations of Paragraph 49.
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1 **RELEVANT MARKETS**

2 50. The Big 12 denies the allegations of Paragraph 50.

3 **FBS Football Players Market**

4 51. The Big 12 admits that football programs at NCAA member institutions are
5 organized into Division I Football Bowl Subdivision (“FBS”), Division I Football Championship
6 Subdivision (“FCS”), Division II, and Division III. The Big 12 lacks sufficient knowledge or
7 information to form a belief as to the truth of the remaining allegations in Paragraph 51 and on
8 that basis denies them.
9

10 52. The Big 12 admits that the NCAA promulgates certain rules applicable to NCAA
11 Division I FBS and FCS football programs. Upon information and belief, the Big 12 further
12 admits that the 2013-14 football season included approximately 35 “bowl” games between
13 certain NCAA Division I FBS football programs and a championship tournament among certain
14 NCAA Division I FCS football programs. The Big 12 denies the remaining allegations of
15 Paragraph 52.
16

17 53. The Big 12 admits that the 2014-15 season for NCAA Division I FBS football
18 programs will include the College Football Playoff and that the format of the playoff will include
19 two semifinal games and a national championship game. The Big 12 lacks sufficient knowledge
20 or information to form a belief as to the truth of the remaining allegations in Paragraph 53 and on
21 that basis denies them.
22

23 54. The Big 12 admits that certain NCAA Division I FBS football programs will play
24 12 football games and that certain games are scheduled on days of the week other than Saturday.
25 The Big 12 denies the remaining allegations of Paragraph 54.
26

1 55. The Big 12 denies the allegations of Paragraph 55.

2 56. The Big 12 denies the allegations of Paragraph 56.

3 57. The Big 12 denies the allegations of Paragraph 57.

4 58. The Big 12 admits that National Football League (“NFL”) rules restrict which
5 individuals are eligible to participate in the NFL. The Big 12 denies the remaining allegations of
6 Paragraph 58.

7 59. The Big 12 denies the allegations of Paragraph 59.

8
9 **D-I Basketball Players Market**

10 60. The Big 12 denies the allegations of Paragraph 60.

11 61. The Big 12 admits that NCAA member institutions that sponsor men’s basketball
12 programs participate in either Division I, II, or III. The Big 12 lacks sufficient knowledge of
13 information to form a belief as to the truth of the remaining allegations in Paragraph 61 and on
14 that basis denies them.

15 62. The Big 12 denies the allegations of Paragraph 62.

16 63. The Big 12 denies the allegations of Paragraph 63.

17 64. The Big 12 admits that National Basketball Association (“NBA”) rules restrict
18 which individuals are eligible to participate in the NBA. The Big 12 denies the remaining
19 allegations of Paragraph 64.

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22 **A Few Exceptions**

23 65. The Big 12 admits that the term “Service Academies” often is used in reference to
24 the United State Military Academy, the United States Naval Academy, and the United States Air
25 Force Academy, and that the Ivy League is comprised of the eight colleges and universities
26

1 identified in Paragraph 65. The Big 12 further admits, upon information and belief, that certain
2 NCAA member institutions, such as those identified in Paragraph 65, represent that they do not
3 provide athletically related financial aid to student-athletes. The Big 12 denies the remaining
4 allegations of Paragraph 65.

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6 66. The Big 12 admits that the NCAA member institutions Plaintiffs defined as the
7 “Service Academies” in Paragraph 65 sponsor NCAA Division I FBS football and men’s
8 basketball programs. The Big 12 denies the remaining allegations of Paragraph 66.

9 67. The Big 12 admits that the Ivy League members sponsor Division I men’s
10 basketball programs, but do not sponsor FBS football programs. Based on information and
11 belief, the Big 12 further admits that Ivy League members represent they have high academic
12 admission standards and represent that they do not provide athletically-related financial aid to
13 their students. The Big 12 denies the remaining allegations in Paragraph 67.

14 **BACKGROUND OF THE UNLAWFUL RESTRAINTS**

15 **Formation of The NCAA Cartel**

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17 68. The Big 12 admits that the NCAA was founded in 1906. The Big 12 further
18 admits that its members have athletics programs that are subject to the NCAA Constitution and
19 Operating Bylaws. The Big 12 denies the remaining allegations of Paragraph 68.

20
21 69. The Big 12 admits that the NCAA rules currently allow schools to provide student
22 athletes with grants-in-aid. The Big 12 lacks sufficient knowledge or information to form a
23 belief as to the truth of the remaining allegations in Paragraph 69 and on that basis denies them.

1 70. The Big 12 admits that NCAA member institutions are either in Division I,
2 Division II, or Division III. The Big 12 lacks sufficient knowledge or information to form a
3 belief as to the truth of the remaining allegations in Paragraph 70 and on that basis denies them.

4 71. The Big 12 admits that amateurism is a foundational concept of the NCAA, and
5 that the NCAA restricts certain benefits to student-athletes that are inconsistent with the
6 collegiate model of athletics. The Big 12 denies the remaining allegations of Paragraph 71.

7
8 **Competition Among NCAA Institutions for Player Services**

9 72. The Big 12 admits that some NCAA member institutions recruit student-athletes
10 for their football and men's basketball programs. The Big 12 further admits that the NCAA has
11 rules that restrict the athletically-related aid that may be provided to student-athletes. The Big 12
12 denies the remaining allegations of Paragraph 72.

13
14 73. The Big 12 admits that various media organizations compile and report
15 information concerning recruitment of student-athletes, that some media outlets such as ESPN
16 and Yahoo! Sports cover and report on high school student-athletes at different points in their
17 high school careers, and that "National Signing Day" is the date on which high school seniors
18 may begin to enter into written agreements with certain NCAA member institutions regarding
19 their athletics programs. The Big 12 denies the remaining allegations of Paragraph 73.

20
21 74. The Big 12 admits that certain media outlets participate in press conferences and
22 televise the events that occur on National Signing Day, which may include some high school
23 football players' announcements of where they intend to play football at the collegiate level. The
24 Big 12 further admits that certain media outlets provide commentary and analysis on the events

1 that occur on National Signing Day, which is usually the first Wednesday in February. The Big
2 12 denies the remaining allegations of Paragraph 74.

3 75. The Big 12 admits that some NCAA member institutions compete to recruit
4 student-athletes for their football and men's basketball programs, that member institutions
5 maintain certain facilities related to their athletics programs, and that they pay salaries to coaches
6 and other employees affiliated with their athletics programs. The Big 12 denies the remaining
7 allegations of Paragraph 75.

9 76. The Big 12 denies the allegations of Paragraph 76.

10 **The Big Business of College Football and Basketball**

11 77. The Big 12 admits that there are currently sixty-five colleges and universities that
12 are member institutions of the five athletic conferences named as Defendants in the *Jenkins*
13 action. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of
14 the remaining allegations in Paragraph 77 and on that basis denies them.

16 78. The Big 12 admits that it has entered into licensing agreements. The Big 12 lacks
17 sufficient knowledge or information to form a belief as to the truth of the remaining allegations
18 in Paragraph 78 and on that basis denies them.

19 79. The Big 12 admits that in 2010 the NCAA announced a fourteen-year agreement
20 with CBS and Turner Sports for the rights to broadcast the NCAA Tournament on television.
21 The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the
22 remaining allegations in Paragraph 79 and on that basis denies them.

24 80. The Big 12 admits that in November 2012 ESPN announced an agreement for
25 certain licenses to broadcast the College Football Playoff over a period of 12 years, and that the
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1 College Football Playoff will include two semifinal games and a national championship game
2 that rotate among several venues. The Big 12 further admits that Notre Dame is a member of the
3 Atlantic Coast Conference for purposes of its Division I men's basketball program, but it is not a
4 member of the Atlantic Coast Conference for purposes of its FBS football program. The Big 12
5 denies the remaining allegations of Paragraph 80.
6

7 81. The Big 12 admits that ESPN has agreed to pay a license fee to broadcast the
8 Sugar Bowl (referred to in paragraph 81 as the Champions Bowl), which is held between football
9 programs from the SEC and the Big 12. The Big 12 lacks sufficient knowledge or information to
10 form a belief as to the truth of the remaining allegations in Paragraph 81 and on that basis denies
11 them.
12

13 82. The Big 12 lacks sufficient knowledge or information to form a belief as to the
14 truth of the allegations in Paragraph 82 and on that basis denies them.

15 83. The Big 12 lacks sufficient knowledge or information to form a belief as to the
16 truth of the allegations in Paragraph 83 and on that basis denies them.

17 84. The Big 12 admits that it has entered into licensing agreements pursuant to which
18 certain athletic events associated with its member institutions are broadcast to viewers by various
19 networks, including Fox, and the Big 12 receives revenues in connection with such licensing.
20 The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the
21 allegations in Paragraph 84 directed towards other Defendants and on that basis denies them.
22 The Big 12 denies the remaining allegations of Paragraph 84.
23

24 85. The Big 12 admits that certain NCAA member institutions pay salaries and other
25 benefits to the coaches of their football programs. The Big 12 lacks sufficient information to
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1 form a belief as to the truth of the remaining allegations in Paragraph 85 and on that basis denies
2 them.

3 86. The Big 12 admits that certain NCAA member institutions have changed
4 membership among conferences, that West Virginia University is a member of the Big 12, and
5 that West Virginia is located away from the other Big 12 member institutions. The Big 12 denies
6 the remaining allegations of Paragraph 86.

8 87. The Big 12 denies the allegations of Paragraph 87.

9 **The NCAA's History of Antitrust Violations**

10 88. The Big 12 denies the allegations of Paragraph 88.

11 89. The Big 12 admits that the NCAA has been named as a party in other lawsuits in
12 the past. The Big 12 denies the remaining allegations of Paragraph 89.

13 90. The Big 12 admits that the United States Supreme Court issued an opinion in
14 *NCAA v. Board of Regents of the Univ. of Oklahoma*, published at 468 U.S. 85 (1984). The Big
15 12 denies the remaining allegations of Paragraph 90.

16 91. The Big 12 admits that the United States Court of Appeals for the Tenth Circuit
17 issued an opinion *Law v. NCAA*, published at 134 F. 3d 1010 (10th Cir. 1998). The Big 12
18 denies the remaining allegations of Paragraph 91.

19 92. The Big 12 admits that in 2001 the Metropolitan Intercollegiate Basketball
20 Association filed a lawsuit against the NCAA and another defendant in United States District
21 Court for the Southern District of New York, Case No. 01-cv-00071-MGC. The Big 12 lacks
22 sufficient knowledge or information to form a belief as to the truth of the remaining allegations
23 in Paragraph 92 and on that basis denies them.

1 93. The Big 12 admits that the NCAA has been named as a party in other lawsuits and
2 that the outcomes in those lawsuits varied. The Big 12 denies the remaining allegations in
3 Paragraph 93.

4 94. The Big 12 admits that in 2006, Jason White and other plaintiffs filed a lawsuit
5 against the NCAA in United States District Court for the Central District of California, Case No.
6 2:06-cv-00999-VBF-MAN (“*White*”) and that no evidentiary hearing on “the effect on
7 competition” occurred. Answering further, the Big 12 states that the Court granted the NCAA’s
8 initial motion to dismiss, denied a subsequent NCAA motion to dismiss, conditionally certified a
9 class, and permitted the NCAA to move for decertification after discovery had concluded. The
10 Big 12 further admits that the parties entered into a settlement in *White*, without admitting or
11 denying liability, while the NCAA’s motions for decertification and summary judgment were
12 pending. The Big 12 denies the remaining allegations in Paragraph 94.

13 95. The Big 12 denies the allegations of Paragraph 95.

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15
16 **The Restraints Have No Justifiable Pro-Competitive Effect**

17 96. The Big 12 denies the allegations of Paragraph 96.

18 97. The Big 12 admits that from the 1998-99 through 2013-14 college football
19 seasons, NCAA Division I FBS football programs determined a national champion through the
20 Bowl Championship Series (“BCS”) National Championship Game. The Big 12 further admits
21 that beginning with the 2014-15 season, Division I FBS football programs will determine a
22 national champion by participating in a College Football Playoff. The Big 12 further admits that
23 only football programs from the athletic conferences named as Defendants in the *Jenkins* action
24 and the University of Notre Dame have played in the BCS National Championship Game. The
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26

1 Big 12 further admits that there have been 72 BCS bowl games, with each game hosting two
2 teams, such that there have been 144 opportunities for teams to appear in a BCS bowl game. The
3 Big 12 denies the remaining allegations of Paragraph 97.

4 98. The Big 12 admits that a team from the SEC won the BCS National
5 Championship Game in each football season between 2006-07 and 2012-13, and that a team
6 from the ACC won the BCS National Championship Game in the 2013-14 football season. The
7 Big 12 denies the remaining allegations of Paragraph 98.

8 99. The Big 12 admits that it has entered into licensing agreements. The Big 12 lacks
9 sufficient knowledge or information to form a belief as to the truth of the allegations regarding
10 the license agreements of the other defendants and on that basis denies them. The Big 12 denies
11 the remaining allegations of Paragraph 99.

12 100. The Big 12 admits that the NCAA expanded the NCAA Tournament for Division
13 I men's basketball to include 64 teams in 1985 and that it has included at least 64 teams ever
14 since. The Big 12 further admits that since 1985, three colleges or universities that are not
15 members of the athletic conferences named as Defendants in the *Jenkins* action have won the
16 NCAA Tournament. The Big 12 further admits that the University of Louisville joined the
17 Atlantic Coast Conference in July 2014. The Big 12 further admits that seven colleges or
18 universities that are not members of the athletic conferences named as Defendants in the *Jenkins*
19 action have competed in the NCAA Tournament's championship game since 1985. The Big 12
20 denies the remaining allegations of Paragraph 100.

1 101. The Big 12 lacks sufficient knowledge or information to form a belief as to the
2 truth of the allegations in Paragraph 101 about Duke University and on that basis denies them.
3 The Big 12 denies the remaining allegations of Paragraph 101.

4 102. The Big 12 admits that it has entered into licensing agreements. The Big 12 lacks
5 sufficient knowledge or information to form a belief as to the truth of the allegations regarding
6 the license agreements of other defendants and on that basis denies them. Upon information and
7 belief, the Big 12 admits that revenues may be different for some of the athletic conferences
8 named as defendants and their members than for some other NCAA Division I conferences
9 and/or their members. The Big 12 denies the remaining allegations of Paragraph 102.

10 103. The Big 12 denies the allegations of Paragraph 103.

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13 **IRREPARABLE INJURIES OF PLAINTIFFS**
14 **AND THE FOOTBALL AND BASKETBALL CLASS**

15 104. The Big 12 denies the allegations of Paragraph 104.

16 105. The Big 12 denies the allegations of Paragraph 105.

17 106. The Big 12 admits that some of the student-athletes who are members of NCAA
18 Division I FBS football and men's basketball programs may not subsequently play football in the
19 NFL or basketball in the NBA. The Big 12 denies the remaining allegations in Paragraph 106.

20 107. The Big 12 denies the allegations of Paragraph 107.

21 **Martin Jenkins**

22 108. The Big 12 lacks sufficient knowledge or information to form a belief as to the
23 truth of the allegations in Paragraph 108 and on that basis denies them.

24 109. The Big 12 lacks sufficient knowledge or information to form a belief as to the
25 truth of the allegations in Paragraph 109 and on that basis denies them.
26

1 110. The Big 12 lacks sufficient knowledge or information to form a belief as to the
2 truth of the allegations in the first sentence of Paragraph 110 and on that basis denies them. The
3 Big 12 denies the remaining allegations of Paragraph 110.

4 **Nigel Hayes**

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6 111. The Big 12 lacks sufficient knowledge or information to form a belief as to the
7 truth of the allegations in Paragraph 111 and on that basis denies them.

8 112. The Big 12 lacks sufficient knowledge or information to form a belief as to the
9 truth of the allegations in Paragraph 112 and on that basis denies them.

10 113. The Big 12 lacks sufficient knowledge or information to form a belief as to the
11 truth of the allegations in the first sentence of Paragraph 113 and on that basis denies them. The
12 Big 12 denies the remaining allegations of Paragraph 113.

13 **Alec James**

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15 114. The Big 12 lacks sufficient knowledge or information to form a belief as to the
16 truth of the allegations in Paragraph 114 and on that basis denies them.

17 115. The Big 12 lacks sufficient knowledge or information to form a belief as to the
18 truth of the allegations in Paragraph 115 and on that basis denies them.

19 116. The Big 12 lacks sufficient knowledge or information to form a belief as to the
20 truth of the allegations in the first sentence of Paragraph 116 and on that basis denies them. The
21 Big 12 denies the remaining allegations in Paragraph 116.
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1 **CAUSE OF ACTION – COUNT I**

2 **Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1**

3 117. The Big 12 repeats and re-alleges its responses to paragraphs 1 to 116 of the
4 Second Amended Complaint.

5 118. The Big 12 denies the allegations of Paragraph 118.

6 119. The Big 12 denies the allegations of Paragraph 119.

7 120. The Big 12 denies the allegations of Paragraph 120.

8 121. The Big 12 denies the allegations of Paragraph 121.

9 122. The Big 12 denies the allegations of Paragraph 122.

10 123. The Big 12 denies the allegations of Paragraph 123.

11 124. The Big 12 denies the allegations of Paragraph 124.

12 **PRAYER FOR RELIEF**

13 To the extent any answer may be required to the Prayer for Relief following paragraph
14 124, the Big 12 denies that Plaintiffs are entitled to the requested relief, or to any relief
15 whatsoever.

16 **AFFIRMATIVE DEFENSES**

17 Without assuming any burden of proof that it would not otherwise bear under applicable
18 law, the Big 12 asserts the following affirmative defenses:

19 **FIRST AFFIRMATIVE DEFENSE**

20 The claims of the Plaintiffs and others claimed to be members of the alleged class or
21 classes are barred, in whole or in part, by res judicata to the extent that Plaintiffs' claims were
22 previously adjudicated in *O'Bannon v. NCAA*, No. C 09-3329 CW, 2014 WL 3899815 (N.D.
23

1 Cal. Aug. 8, 2014), or to the extent they are adjudicated in any other litigation brought by
2 members of the Plaintiffs' putative classes against any of the Defendants that reaches final
3 judgment before a judgment is rendered in this action.

4 **SECOND AFFIRMATIVE DEFENSE**

5
6 The claims of the Plaintiffs and others claimed to be members of the alleged class or
7 classes are barred, in whole or in part, by collateral estoppel to the extent issues central to this
8 case were previously adjudicated in *O'Bannon v. NCAA*, No. C 09-3329 CW, 2014 WL 3899815
9 (N.D. Cal. Aug. 8, 2014), or to the extent they are adjudicated in any other litigation brought by
10 members of the Plaintiffs' putative classes against any of the Defendants that reaches final
11 judgment before a judgment is rendered in this action.

12 **THIRD AFFIRMATIVE DEFENSE**

13
14 Plaintiffs' claims fail to account for the impact of, and the relief they seek is inconsistent
15 with, Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681 *et seq.*, and the
16 regulations and interpretations thereof by the Department of Education and other federal
17 agencies (together, "Title IX"). Each of the Big 12's member institutions is subject to the
18 requirements of Title IX. Title IX requires subject schools to provide comparable athletic
19 opportunities and financial support to male and female student-athletes and equitable
20 apportionment of financial aid for members of both sexes. 34 C.F.R. §§ 106.37(a), 106.41.
21 Plaintiffs' allegations regarding, among other things, relevant markets, economic restraints, and
22 pro-competitive justifications, their liability theories, and their requests for relief all ignore the
23 impact of Title IX and improperly depend upon purported antitrust analysis of legally and
24 economically interrelated markets as if they were independent.
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FIFTH AFFIRMATIVE DEFENSE

The claims of the Plaintiffs and others claimed to be members of the alleged class or classes are barred, in whole or in part, by the doctrine of mootness to the extent that Plaintiffs seek injunctive relief for student-athletes who are no longer participating in NCAA athletics or to the extent that the NCAA bylaws that Plaintiffs seek to enjoin are no longer enforced.

Wherefore, the Big 12 prays that this Court deny the relief requested by Plaintiffs, dismiss this action with prejudice, enter judgment that Plaintiffs have and recover no relief from the Big 12, tax costs and attorneys' fees against the Plaintiffs, and afford the Big 12 such other and further relief as may be just and proper.

1 DATED: March 2, 2015

2
3 Respectfully submitted,

4 POLSINELLI PC

5 /s/Leane K. Capps

6 Leane K. Capps (*pro hac vice*)

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Attorneys for Defendant

THE BIG 12 CONFERENCE, INC.

CERTIFICATE OF SERVICE

I hereby certify that, on March 2, 2015, pursuant to Federal Rules of Civil Procedure 5(b)(2)(E) and 5(b)(3) and Local Rule 5-1, I electronically filed the foregoing Answer and Affirmative Defenses of Defendant the Big 12 Conference, Inc. to Plaintiffs' Second Amended Complaint with the Clerk of the Court using the CM/ECF system which will send notification to the email addresses registered.

/s/Leane K. Capps

Leane K. Capps

Polsinelli PC

*Counsel for The Big 12
Conference, Inc.*